

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION APPLICATION NO. 419 OF 2024
WITH
CONTEMP PETITION IN COMM. DIVISION MATTERS (L) NO. 29354 OF 2024
WITH
COMMERCIAL ARBITRATION PETITION NO. 790 OF 2024
WITH
INTERIM APPLICATION NO. 3174 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO. 790 OF 2024

Fab Tech Works & Constructions Pvt. Ltd. ...Applicant

Versus

Savvology Games Pvt. Ltd. & Ors. ...Respondents

Mr. Nadeem Shama, a/w *Hrishikesh Nadkarni, Salman Athania*,
i/b *PAN India Legal Services LLP*, for the Applicant.

Mr. Pathik Muni, a/w *Chinton B.*, for Respondent.

CORAM : SOMASEKHAR SUNDARESAN, J.

DATE : MARCH 17, 2025

PC :

1. Commercial Arbitration Application No. 419 of 2024 is an Application under Section 11 of the Arbitration and Conciliation Act, 1996 (***“the Act”***), seeking appointment of an arbitrator in connection with disputes and differences that are said to have arisen between the parties under an Investment Agreement dated March 30, 2021. The

arbitration agreement is contained in Clause 15 (found at Page 69 & 70 of the Application). In the interest of brevity, the arbitration agreement is not being extracted here. Suffice it to say that this matter falls within the jurisdiction of this Court.

2. It is apparent from the record that the arbitration agreement was invoked by the Applicant on June 28, 2024, to which there is a reply dated July 8, 2024, stating that the invocation of arbitration is not maintainable because two parallel proceedings cannot take place. The ostensible two parallel proceedings are nothing but proceedings under Section 9 of the Act on the same facts under the same Investment Agreement and the aforesaid proceedings under Section 11.

3. By an order dated July 22, 2024, a Learned Single Judge of this Court had been pleased to grant certain interim reliefs under Section 9 of the Act. One of the reliefs explicitly was to make a disclosure. The said disclosure is purported to have been made in Exhibit 'F' which is an annexure to an Interim Application being Interim Application No. 3174 of 2024 seeking withdrawal of the order dated July 22, 2024 passed by the Learned Single Judge. The ostensible ground for seeking such withdrawal is that there had been misrepresentation to the Court to obtain the aforesaid order. Exhibit 'F' of this Application actually contains just three lines. It gives a purported value against the word "Stocks", "Fixed Deposit" and "Mutual Funds", which is evidently not in compliance with the order dated July 22, 2024.

4. Contempt Petition (L) No. 29354 of 2024 has been taken out alleging contempt of the aforesaid order. Today, at this stage we are not passing any order on the Contempt Petition, except to call for a reply

asking the Respondent to show cause as to why the Contempt Petition shall not be proceeded with.

5. Be that as it may, evidently, an order under Section 9 having been passed, whether there are disputes and differences between the parties as set out in the invocation notice, and whether such disputes deserve to be dealt with one way or the other, is a facet that squarely falls in the domain of the arbitral tribunal, which is required to be appointed pursuant to Section 11 of the Act.

6. It is rather surprising that invocation of Section 9 and Section 11 have been treated in a cavalier manner by the Respondent, terming them as parallel proceedings on the same cause of action in the teeth of the scheme of the Act. Section 9 is meant to grant temporary interim protection in aid of the arbitral tribunal conducting proceedings. Non-compliance with the agreed commitment to refer disputes to arbitration is the basis of filing a Section 11 Application.

7. Today, Learned Counsel for the Respondents makes one sole point repeatedly, namely, that there exist no disputes and differences between the parties. This is obviously not borne out by the record, because the difference of opinion between the parties is writ large on the face of record. Be that as it may, it shall be open to the Respondents to take out such Application as advised under Section 16 of the Act if they believe that the jurisdiction of the arbitral tribunal has not been attracted.

8. When a Learned Single Judge of this Court has already considered existence of the arbitration agreement and has thought it fit

to pass an order under Section 9, it would be expected that the party affected by it would such order in appeal or for an appropriate intervention, or comply with it. This is the only manner of having deference to the rule of law.

9. Neither of this approach having been adopted, no useful purpose would be served in keeping the Section 11 Application pending on the docket of this Court any further.

10. The scope of review under Section 11 is explicitly set out in Section 11(6A) of the Act. It is now trite law, with particular regard to the decisions of a seven-judge Bench in the *Interplay Judgement*¹ followed by multiple others, including *SBI General*² and *Patel*³ that the Section 11 Court ought not to venture beyond examining the existence of a validly existing arbitration agreement that has been formally executed. Even questions of existential substance is a matter that falls squarely in the domain of the arbitral tribunal, in view of Section 16 of the Act.

11. Being satisfied that an arbitration agreement is validly in existence, and that arbitration has been duly invoked, it is in the fitness of things to refer the disputes and differences between the parties in connection with the aforesaid Investment Agreement to arbitration by a Sole Arbitrator.

12. In these circumstances, both this Application under Section 11 of the Act as well as the Section 9 Petition are hereby ***finally disposed***

¹ *In Re: Interplay Between Arbitration Agreements Under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899 – (2024) 6 SCC 1*

² *SBI General Insurance Co. Ltd. v. Krish Spinning – 2024 SCC OnLine SC 1754*

³ *Ajay Madhusudan Patel v. Jyotrindra S. Patel – 2024 SCC OnLine SC 2597*

of, in terms of the following order:

- a) Mr. Mandar Soman, a learned advocate of this Court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Investment Agreement referred to above;

Office Address:-

Office No.21, 3rd Floor,

Bombay Mutual Building,

P. M. Road, Fort, Mumbai- 400 001

Email ID: mandar.soman82@gmail.com

- b) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from the date on which this order is uploaded on the website of this Court. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with a copy of this Order;
- c) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;
- d) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated,

to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

- e) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

13. Needless to say, nothing contained in this order is an expression of an opinion on merits of the matter or the relative strength of the parties. All issues on merits are expressly kept open to be agitated before the arbitral tribunal appointed hereby.

14. The order passed on July 22, 2024 under Section 9 shall be treated as a final order under Section 9. It shall be open to the parties to convince the arbitral tribunal on the need for variation, modification or vacation of such order, once the arbitral tribunal has had occasion to consider the merits of the case and decide what is appropriate as the next step in the arbitral proceedings.

15. The Contempt Petition is kept pending. Reply to the

Contempt Petition shall be filed no later than March 24, 2025. Rejoinder, if any, shall be filed no later than March 28, 2025. List for further consideration of ***April 7, 2025***.

16. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]